

UNITED STATES BANKRUPTCY COURT

DISTRICT OF RHODE ISLAND

In Re: William J. Gaiser
Debtor(s)

Case No. 05-14604
Chapter 7

MEMORANDUM IN SUPPORT OF MOTION
FOR RELIEF FROM THE AUTOMATIC STAY

MERS, as nominee for Meritage Mortgage Corporation (together with its predecessors, successors, affiliates, principals, and assigns, "hereinafter the Lender"), in support of its Motion for Relief from the Automatic Stay submits the within Memorandum.

I. FACTUAL BACKGROUND

1. On or about October 13, 2005, William J. Gaiser, (the "Debtor") commenced the within action under Chapter 7 of Title 11 of the United States Code in the United States Bankruptcy Court for the District of Rhode Island.

2. Prior to the commencement of this proceeding, on or about May 10, 2004 MERS, as nominee for Meritage Mortgage Company extended a loan to Debtor , William J. Gaiser (the "Debtor") in the original principal amount of \$57,000.00 (the "Loan").

3. The loan is evidenced by a promissory note executed by the Debtor ("the note"), together with any and all documents executed in connection with the Loan, (the "Loan Documents").

4. The note is secured by a second mortgage (the "Mortgage") executed by the debtor on real property located at 523-525 Cranston Street, Providence, Rhode Island 02907 (the "Property").

5. Lender is the current holder in due course of the loan documents.
6. There is no other collateral securing the loan documents.
7. The property is a multi-unit residential dwelling.
8. The debtor does not reside in the property.
9. As of October 13, 2005, there is an outstanding principal balance in the amount of \$56,752.73 due and owing to Lender pursuant to the Loan Documents, plus additional interest and miscellaneous charges, attorney's fees, costs and expenses.
10. In addition to the amounts in the preceding paragraph, the Property is encumbered by a first lien position mortgage to MERS as nominee for Meritgage Mortgage Corporation in the approximate principal amount of \$226,193.04.
11. According to the City of Providence, as of October 19, 2005, there are outstanding real estate taxes for the 1st quarter 2005 in the amount of \$1,095.24, plus interest.
12. According to the Debtors' schedules, the approximate value of the Property is \$304,000.00.
13. At the time of the bankruptcy filing, there was a pre-petition arrearage owing to Lender in the amount of \$3,741.15.
14. The regular monthly payment due to Lender at this time is \$489.72.
15. The next scheduled payment is due to Lender on March 1, 2005.
16. The debtor's Statement of Intention indicates that it is their intention to surrender the property to Lender. To date, the Debtors have not complied with their stated intention pursuant to 11 U.S.C. §521.

17. There are no defenses, claims or set-offs available to the Debtors that would operate to reduce the indebtedness or any obligation to make payment thereof.

II. DISCUSSION

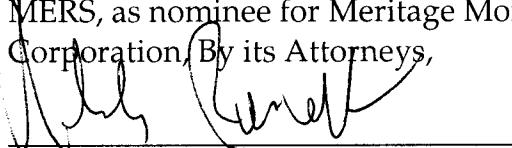
Lender requests relief from the automatic stay to permit it to exercise its various non-bankruptcy rights and remedies including, without limitation, taking possession of the property, obtaining a deed-in-lieu of foreclosure and/or foreclosing the mortgage, seeking to obtain, if necessary, eviction of the Debtors and any occupant from the Property, and any other relief this Court deems just and proper. Lender submits that it is entitled to said relief pursuant to 11 U.S.C. §362(d)(1).

Pursuant to 11 U.S.C. §362(d)(1), the Court shall grant relief from the automatic stay for cause. Lender respectfully submits that the cause warranting relief from the Automatic stay is the Debtors' failure to make payments to Lender resulting in a post-petition arrearage under the Loan Documents. Furthermore, the Debtors have not complied with their stated intention pursuant to 11 U.S.C. §521.

CONCLUSION

For the reasons set forth herein, Lender respectfully requests that it be granted relief as prayed in the Motion for Relief from Automatic Stay.

MERS, as nominee for Meritgage Mortgage
Corporation, By its Attorneys,



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